GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Tribal Welfare Department - East Godavari District - Revision Petition filed by Sri Kadiyam Chakram & Other S/o.Narayana Murthy R/o.Pithamamidi (V) Gangavaram (M), E.G.District against the orders of the Additional Agent to Government, Rampachodavaram dated.29.10.2005 in CMA No.95/05 in respect of land adm.Acs.7.05 in Sy.No.53 situated at Pidathamamidi (V) Gangavaram (M), E.G.District- Rejected – Orders – Issued.

SOCIAL WELFARE (TW.LTR-2) DEPARTMENT

G.O.MS.No. 92 Dated: 27-11-2015
Read the following:-

1. Revision Petition filed by Sri Kadiyam Chakram & Other S/o.Narayana Murthy R/o.Pithamamidi (V) Gangavaram (M), East Godavari District dated:12.12.2005.
2. Govt.Memo.No.1321/LTR-2/2006, dt.03.05.2006.
3. From the Additional Agent to Government, Rampachodavaram, East Godavari District CMA No.95 of 2005, dt. .01.2013.
4. Govt.Lr.No.1321/LTR-2/2006, dt.26.05.2015.

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ORDER:-

In the reference first read above Sri Kadiyam Chakram & Other S/o.Narayana Murthy R/o.Pithamamidi (V) Gangavaram (M), East Godavari District has filed a Revision Petition before the Government U/s. U/s. 3(1)(a) of APSALTR 1959 r/w 1/70 against the orders of the Additional Agent to Government dt. 29.10.2005 in CMA No.95/05 in respect of land adm.Acs.7.05 in Sy.No.53 situated at Pidathamamidi (V) Gangavaram (M), E.G.District.

2. The Government, in the reference 2nd read above, have admitted the said Revision Petition and requested the Additional Agent to Government & Project Officer, ITDA, Rampachodavaram, East Godavari District to furnish the parawise remarks and connected records on the Revision Petition.

3. In the reference 3rd read above, the Additional Agent to Government & Project Officer, ITDA, Rampachodavaram, East Godavari District has furnished parawise remarks along with the connected records.

4.The facts of the case in brief are:

The Special Deputy Collector cum Agency Divisional Officer, Rampachodavaram by his orders in LTRP No.160/2004, dated 31.12.2004 has held that the land measuring an extent of Ac.7.05 cts of land in Sy.No.53 situated in Pidathamamidi village, Gangavaram Mandal, East Godavari District, from the date the Revision Petitioner herein (who is the respondent in the said LTR) is in possession and enjoyment till date is contrary to Sec.3 of AP Schedule area LT Regulation 1 of 59 as amended by regulation 1 of 70 mainly on the ground that the Revision Petitioner did not obtain prior permission from the Agent to Government as required under Sec.3(a) and (2) of APSCLTR 1/59 and hence the alienation if any is null and void. In fact the Spl.Dy.Tahsildar filed application for the ejectment of Revision Petitioner from petition schedule property and for delivery of the same to Government. The said matter was held against the Revision Petitioner by SDC (TW) whereby the Revision Petitioner was ordered to be evicted from the Petition schedule property. Against the same the Revision Petitioner filed Appeal in CMA No.95/2005, dt.22.10.2005 before the Additional Agent to Government, Rampachodavaram who dismissed the said Appeal confirming the order of Special Deputy Collector (Tribal Welfare). Aggrived by the same the present Revision Petition.

5. The point for consideration is whether the order of Agent to Government who dismissed the Appeal filed by the Revision Petitioner herein, by confirming the orders passed by the Learned Special Deputy Collector (TW) is sustainable or not.

6. Basically as per the G.O.Ms.No.971 dated 7.10.69 assignments of Government lands in favour of Non-Tribes are prohibited in Agency Areas.

(P.T.O)

7. Section 3(1) (a) (b) of APSALT regulation which deals with the subject matter extracted hereunder:

“Section3: transfer of immovable property by a member of a Schedule Tribe:-

1(a) Notwithstanding anything by enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person. Whether or not such a person is a member of a Schedule Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person who is a member of Schedule Tribe or a Society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 (Act 7 of 1964) which is composed by society members of the schedule tribe.

1(b) Until the contrary is proved any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Schedule Tribe, shall be presumed to have been acquired by person or his predecessor in possession through a transfer made to him by a member of a Schedule Tribe”.

7. The above Revision Petition having been stood over for consideration till 13.06.2015 before the Government and the matter having been heard in presence of both parties on 13.06.2015. The Government passes the following orders:-

8. In the remarks of the Additional Agent to Government, Rampachodavaram stated that the order in CMA 95/2005 dated 29.10.2005 is correct and in accordance with rules and regulation. The possession and occupation of the Petitioner is not valid under APSA LTR 1/1959 as amended by Land Transfer Regulation 1 of 1970 as the possession and occupation of land cannot create a title over the property situated in the scheduled areas in favour of non-tribal. The Revision Petitioner ie. Kadiyam Chakram and Senapthi, Ramarao have filed unregistered sale agreements dated 14.08.1969 and 5.11.1966 respectively, in lower court to prove their right over the land. The Lower court not accepted that document. In view of Sec.17(1) of the Registration Act and other provisions of transfer of property Act, the sale through such a document cannot be recognized in law. The High Court of Andhra Pradesh in its judgment dated 10.08.1998 in CRP No.1987 of 1996 held that unregistered sale deed cannot be taken into account, while examining the nature of rights under the Land Transfer Regulations. Hence the decision of the Special Deputy Collector and Appellate Court are in accordance with the Regulation and the Rules framed there under.

9. On behalf of the Revision Petitioner, it is contended that Petition Schedule Land is recorded in Adangal in their names and the Petitioner is in possession of the same from several years. He filed the above Revision Petition alleging that the order of his eviction from the above land is Agricultural land is bad. The Learned counsel relied on a judgment of Hon’ble High Court of AP delivered in W.P.No.5153/2006 dated 4.9.2006 which directed the Government to dispose of the present Revision Petitioner as expeditiously as possible and within 3 months and also to maintain status quo with regard to possession as on 4.9.2006 shall be maintained.

10. The order of the Additional Agent to Government which is impugned herein discloses that the Revision Petitioner failed to show any document of title even though a lot of opportunity was given to him to prove his title basically heavy burden lies on non-tribe who claims right and title in an agency area, as per Sec. 3(1) and (b) of LTR 1/59 ambled by resulting 1/70.

11. The Hon’ble Supreme Court in C.A.No.4601 and 4602 of 1997 and batch in Samath Vs. Government of AP has held that the transfer of land by juristic person or allotment of land by State to a Non Tribe is prohibited.

12. Further the Hon’ble High Court of A.P.(Full Bench) as reported in AIR 1982 AP (1) has held that any transfer in favour of a Non-Tribe is prohibited and also held that the land Transfer Regulation 1 of 59 strictly prohibits even the transfer of land by a non-tribe to a non-tribe except with permission of Agent to Government, Such a facility in favour of non-tribe was taken away by Regulation 1 of 70 which prohibits any transaction in favour of anybody except a tribe.

(P.T.O)

13. Even such an embargo against sale in favour of non tribe is there even under the Agency Tracts Interest and Land Transfer Act 1917, unless it is with the previous consent in writing of Additional Agent to Government. That being the law, governing the subject matter the Revision Petitioner is bound to prove his right and title. But the Revision Petitioner did not produce any document of title and the APSALT Regulation basically is meant for the protection of interest and welfare of only Schedule Tribes but not Non-Tribes as per the Judgements of the Hon'ble High Court of AP. and the Hon'ble Supreme Court, as stated above.

14. A non-tribe who does not have a valid title under a document or patta or a grant under any act is not entitled to continue in possession and hence if he is found to be in possession of a schedule land in Agency Area is liable to ejected and the opportunity given to him is sufficient as per the provisions of the said Regulation. Further there is a presumption under Section. 3 against such Non-Tribe and hence the concurrent findings of facts by the learned Special Deputy Collector and Additional Agent to Government are correct and the same are not liable to be interfered with.

15. The contention of the learned Advocate that there is no prohibited transfer in the instant case and that the land in question was recorded as assessed waste dry of Government is not acceptable as a non tribe in Agency Area is not entitled to occupy or to continue to be in possession of the same. If the Non-Tribe is evicted, an eligible Tribe can be immediately assigned the said property, which obviously is the object and intendment of the above Regulation. More so, as held by the Full bench of Hon'ble High Court of A.P., and hence there is no error in the orders impugned in this Revision Petition.

16. There is no infirmity found either in the order of the Learned Special Deputy Collector, Rampachodavaram or Additional Agent to Government, Rampachodavaram. Accordingly, the Revision Petition is dismissed.

17. The Additional Agent to Government, Rampachodavaram, East Godavari District is requested to take necessary action in the matter accordingly.

18. The original record bearing No.95/2005 received from the Additional Agent to Government, Rampachodavaram, East Godavari District, through reference 3rd read above, is returned herewith and he is requested to acknowledge the receipt of the same immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr. A. VIDYA SAGAR
PRINCIPAL SECRETARY TO GOVERNMENT (TW)

To:
The Collector & Agent to Government, Kakinada, East Godavari District.
The Additional Agent to Government & Project Officer, ITDA
Rampachodavaram, East Godavari District.(w.e.)
The Special Deputy Collector, Tribal Welfare, Rampachodavaram, East Godavari District.
Copy to:
Sri Kadiam Chakram, S/o.Narayanamurthy, R/o.Pidathamamidi (V), Gangavaram (M) East Godavari District.
The P.S to Hon'ble Minister (SWE & TWE) for information
The P.S to Principal Secretary to Government (TW)
SF/SC.

// FORWARDED:: BY ORDER //

SECTION OFFICER